



**Department of Energy**  
Western Area Power Administration  
P.O. Box 281213  
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September 30, 2009

Honorable Kimberly D. Bose  
Office of the Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Room 1A, East  
Washington, DC 20426

Re: Western Area Power Administration  
Docket No. NJ09-\_\_\_\_-000

Dear Secretary Bose:

Pursuant to the Federal Energy Regulatory Commission's (Commission) Order Nos. 890, 890-A, 890-B, and 890-C,<sup>1</sup> and sections 35.28(e) and (f)(iv)(2) of the Commission's Regulations,<sup>2</sup> the United States Department of Energy, Western Area Power Administration (Western) hereby submits proposed revisions to its non-jurisdictional Open Access Transmission Tariff (Tariff). The primary purpose of this filing is to revise the terms of Western's Tariff to incorporate various modifications directed by the Commission in the aforementioned orders.

Enclosed please find the original and 14 copies of the proposed Tariff revisions. I have also enclosed an additional copy that I would appreciate being time-stamped and returned in the self-addressed envelope.

Western is a Federal Power Marketing Administration (PMA) that markets Federal power and owns and operates transmission facilities throughout 15 western and central states, encompassing a geographic area of 1.3 million square-miles. Western was established pursuant to section 302 of the DOE Organization Act.<sup>3</sup> Western's primary mission is to market Federal power and transmission resources constructed with congressional authorization. The Federal generation marketed by Western resulted from the construction of power plants by the Federal generating agencies, principally the Department of the Interior's Bureau of Reclamation and the U.S. Army Corps of Engineers. The power and transmission requirements of project use loads, which are designated by Congress and carry out purposes such as pumping of irrigation water, by law, must

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<sup>1</sup> Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 FR 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), order on reh'g, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), order on reh'g, Order No. 890-B, 73 Fed. Reg. 39,092 (Jul. 8, 2008), 123 FERC ¶ 61,299 (2008), order on reh'g, Order No. 890-C, 74 Fed. Reg. 12,540 (March 25, 2009), 126 FERC ¶ 61,228 (2009) (collectively, Order No. 890).

<sup>2</sup> 18 C.F.R. § 35.28(e) and (f) (2008).

<sup>3</sup> 42 U.S.C. § 7152(a) (2003).

be met first for the life of those projects. Power in excess of these requirements is available for marketing by Western to its preference customers. Western's statutory obligation to market Federal hydropower from a particular Federal project extends for the life of that project. Western owns and operates over 17,000 miles of high-voltage transmission lines, and has entered into long-term transmission contracts for widespread distribution of Federal hydro generation to project use and preference customers comprised of non-profit public entities such as electric cooperatives, Native American tribes, municipal utilities, and Federal and state government entities. Western's transmission system resides within both the Midwest Reliability Organization (MRO) and the Western Electricity Coordinating Council (WECC). Western has four Regional offices located in Phoenix, Arizona (Desert Southwest Region), Sacramento, California (Sierra Nevada Region), Loveland, Colorado (Rocky Mountain Region), and Billings, Montana (Upper Great Plains Region), as well as the Colorado River Storage Project Management Center located in Salt Lake City, Utah (collectively, Regions), and a Corporate Services Office located in Lakewood, Colorado. Western's Regions have reserved sufficient transmission capacity on the systems they manage to meet their existing statutory obligations regarding project use and preference power deliveries. Those obligations are accounted for in each project's marketing plan, which is, in turn, implemented through existing contracts for the provision of hydroelectric capacity and/or energy.<sup>4</sup> In addition, Western's transmission system is used by third parties for network and point-to-point transmission service purposes; therefore, Western has contractual obligations it must meet under a myriad of existing transmission agreements which were executed before and after Western's Tariff became effective.

Western is not a public utility subject to the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act (FPA).<sup>5</sup> Western is, however, a transmitting utility subject to FPA sections 210-213,<sup>6</sup> and has provided open access transmission service since its inception in 1977. The revisions Western proposes below are primarily intended to revise the terms and conditions of Western's existing Commission-approved Tariff to incorporate various modifications directed in Order No. 890.<sup>7</sup> Western also proposes relatively minor revisions to its Commission-approved Large Generator Interconnection Procedures and Agreement and Small Generator Interconnection Procedures and Agreement (LGIP, LGIA, SGIP, and SGIA, respectively),<sup>8</sup> mostly to eliminate certain discrepancies with Western's governing statutes and long-standing contractual practices that have come to light as Western has gained more experience administering the Commission's standard interconnection procedures.

Western has two points of clarification regarding its compliance with Order No. 890. First, with respect to the matter of redispatch cost posting, Western notes that Order No. 890 directed transmission providers to calculate and post on the OASIS a monthly average cost of redispatch for each internal congested transmission facility or interface over which it provides redispatch

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<sup>4</sup> The majority of these contracts do not terminate until December 31, 2020, at the earliest.

<sup>5</sup> 16 U.S.C. §§ 824d and 824e (2000).

<sup>6</sup> 16 U.S.C. §§ 824i-824l (2000).

<sup>7</sup> Insofar as Western is not subject to the Commission's jurisdiction under FPA section 205, Western is not seeking the Commission's approval under FPA section 205 to continue including previously-approved non-rate terms and conditions in its Tariff that differ from those set forth in Order No. 890. See Order No. 890 at P 135.

<sup>8</sup> See Western Area Power Administration, 112 FERC ¶ 61,044 (2005). See also Western Area Power Administration, 119 FERC ¶ 61,239 (2007); and the Commission's delegated letter order issued on September 6, 2007, in Docket No. NJ07-2-001.

service using planning redispatch or reliability redispatch under the pro forma Tariff. Nonetheless, the Commission indicated in Order No. 890-A that a transmission provider may propose a variation from the pro forma Tariff to allow for the posting of actual billing data if the transmission provider believes it is too burdensome to average the data prior to posting.<sup>9</sup>

At this time, however, it is not possible for Western to foresee the amount of redispatch that will be provided in the future by its Regions given the markedly differing circumstances among the various Federal projects; therefore, it is not possible for Western to foretell the associated cost calculation and posting workload and whether it will constitute a burden on Western's limited staff resources. Consequently, rather than attempt to revise its Tariff to provide a case-by-case approach to posting the data, Western hereby commits for the sake of transparency to post a notification on the applicable OASIS site if and when future workload and resource issues necessitate that a Region begin posting actual billing data in lieu of average data.

Second, with respect to the designation and undesignation of network resources, although Western's Regional Available Transfer Capability (ATC) methodologies do not currently account for the effects on ATC of short-term undesignations of network resources, it is probable that they will do so in the future, meaning that in certain cases Western reasonably could allow its network customers to forego undesignating network resources to make firm sales of less than one year. However, it is unlikely that all of Western's Regional ATC methodologies will reach this point at the same time; therefore, rather than attempt to revise its Tariff to provide a case-by-case approach on this matter, if and when each of Western's Regions decide to revise their ATC methodologies to account for the effects on ATC of short-term undesignations of network resources, they will post on the OASIS a business practice allowing network customers to forego undesignating network resources to make firm sales of less than one year. At the point where all of Western's Regional ATC methodologies make such an account, Western will revise its Tariff accordingly.

As provided by sections 35.28(e) and (f)(2) of the Commission's Regulations<sup>10</sup>, Western requests that the Commission issue a declaratory order determining that with this filing, Western's Tariff maintains its status as a "safe harbor" Tariff, ensuring that it may not be denied transmission access by any Commission-jurisdictional public utility. Western has already developed transmission rates for use in the Tariff under separate public processes pursuant to applicable Federal law and regulation, and those rates have already been approved by the Commission. To the extent a specific rate does not exist for a service provided under the Tariff (i.e., Schedule 9 and Schedule 10), Western will adopt rates for those services in Region specific rate proceedings as described in more detail below.

The Commission found in Order No. 890 that a non-public utility such as Western that already has a safe harbor Tariff must amend its Tariff so that its provisions substantially conform or are superior to the revised pro forma Tariff if it wishes to continue to qualify for safe harbor treatment.<sup>11</sup> Western respectfully submits that this filing complies with the Commission's mandate.

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<sup>9</sup> Order No. 890 at P 1162, and Order No. 890-A at P 625, respectively.

<sup>10</sup> 18 C.F.R. § 35.28(e) (2008) and 18 C.F.R. § 35.28(f)(2) (2008).

<sup>11</sup> Order No. 890 at P 191.

## **I. PROPOSED REVISIONS TO WESTERN'S TARIFF DOCUMENTS**

### **A. Tariff**

#### **1. Sections 1.5 and 19.2**

To address the requirement in Order No. 890 that transmission providers include Tariff language in their compliance filings describing how the transmission provider will process requests for cluster studies and how it will structure transmission customers' obligations when they have joined a cluster, Western proposes to add a new term "Clustering" in section 1.5 of its Tariff, and also to add the requisite clustering provisions to section 19.2. Western's proposed language is based largely on that filed by Public Service Company of New Mexico (PNM), which the Commission accepted without modification.<sup>12</sup> To the extent that Western's proposed language is more restrictive than that filed by PNM, Western notes that Order No. 890 gave each transmission provider discretion to develop the clustering procedures it will use, because the transmission provider is in the best position to determine the clustering procedures that it can accommodate and that will prevent a customer from strategically participating in clusters to avoid costs for needed transmission system upgrades.<sup>13</sup>

#### **2. Sections 1.29 and 1.43**

During the informal public process that Western conducted regarding the revisions proposed in this filing,<sup>14</sup> a commenter suggested that Western add ancillary services into the definition of the term "New Rate" in section 1.29 of Western's reciprocity Tariff. Western agreed with the commenter's suggestion. The term "New Rate" was incorporated into Western's Tariff through a previous revision process. This was done to accommodate new language added concurrently in section 1.0 of Attachment J to Western's Tariff regarding change of rates. However, Western's review indicated that the phrase "ancillary services" was inadvertently omitted from the term's definition.<sup>15</sup> Consequently, Western has modified section 1.29 of its Tariff so that the term "New Rate" is now defined as "the modification of a Rate for transmission or ancillary services provided by the Transmission Provider, ~~that-which~~ has been promulgated pursuant to the rate development process outlined in Power And Transmission Rates, 10 C.F.R. Part 903 (2006)."

Western's review also indicated the presence of a ministerial error in section 1.43 of its revised Tariff. For that reason, Western has revised this provision so that the term "Rate Adjustment" is now defined, in pertinent part, as "a change in an existing rate or rates, or the establishment ~~or~~ of a rate or rates for a new service."

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<sup>12</sup> Public Service Co. of New Mexico, 122 FERC ¶ 61,176 at P 14 (2008).

<sup>13</sup> Order No. 890 at P 1371.

<sup>14</sup> See the relevant documents posted at <http://www.wapa.gov/transmission/oatt.htm>.

<sup>15</sup> See Western's August 3, 2005 and June 20, 2007 filings in Docket Nos. NJ05-1-001 and -002, respectively.

3: Sections 1.45, 10.1, 16.2, 19.3, 19.4, 21.1, 29.3, 30.6, 31.5, 32.3, and 32.4

As Western has explained in previous filings,<sup>16</sup> Western is a non-profit Federal PMA that implements strict cost controls on all aspects of its business, including the establishment of cost-effective staffing levels relative to Western's role as a transmission owner and provider throughout multiple states. In addition, as a Federal entity, Western is subject to executive and congressional oversight regarding staffing, funding, and authorization limits. Funding levels for these items may be established that limit Western's ability to meet various transmission and interconnection study deadlines. For these reasons, Western proposed in its previous filings, and the Commission approved in its subsequent orders, global modifications to Western's LGIP, LGIA, SGIP, and SGIA intended to allow Western to meet its interconnection study and other deadlines using "Reasonable Efforts," as that term is defined in the aforementioned documents. Similarly, to alleviate the conflict between Western's statutory staffing and funding limitations and the Commission's goal of strict adherence by jurisdictional transmission providers to the Tariff's 60-day transmission study timelines, Western proposes to include in section 1 of its Tariff the term "Reasonable Efforts" and to use that term in its Tariff's transmission study timeline and metric provisions rather than the undefined term "due diligence." Further, Western has capitalized existing instances of the phrase "reasonable efforts" in the Tariff to reflect this definition.

4. Sections 7.2(b) and 11, and Attachment Q

Western has revised section 7.2(b) of its Tariff for the purpose of implementing new Attachment Q to its Tariff,<sup>17</sup> and has also revised section 11 to conform it to the relevant modifications directed by Order No. 890. As a result of these revisions, Western has modified changes to this section approved by the Commission in Western's January 25, 2005, Filing because Western's earlier changes to these sections are no longer necessary with the inclusion of the new Attachment Q to the Tariff.

New Attachment Q to Western's Tariff provides for the creditworthiness review procedures as directed by Order No. 890. In developing these procedures, Western evaluated industry best practices for determining creditworthiness based on compliance filings submitted by various transmission providers, and on clarifications and findings stated by the Commission in its related orders. Western's proposed creditworthiness review procedures are relatively limited in scope and administrative complexity. Nonetheless, they specify the qualitative and quantitative criteria that Western will use to determine the level of secured and unsecured credit required, and they contain the procedural and other elements described in Order No. 890.

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<sup>16</sup> See Western's January 25, 2005, and March 1, 2007, filings in Docket Nos. NJ05-1-000 and NJ07-2-000, respectively (January 25, 2005 Filing and March 1, 2007 Filing, respectively).

<sup>17</sup> Western notes that it submitted through an informational filing, and the Commission acknowledged in a subsequent delegated letter order, language added to section 7.1 of Western's Tariff regarding potential advance payment for transmission services. Western equated the Commission's acknowledgment to its approval of the added language, and, as such, Western did not redline that language in this filing. See Western's October 31, 2007 filing in Docket No. NJ08-1-000; and the Commission's relevant delegated letter order issued on November 16, 2007.

## 5. Section 9

Western's original safe harbor Tariff filing removed pro forma language from section 9 of its Tariff.<sup>18</sup> This language was removed to reflect the fact that Western is not a public utility, and is not subject to the Commission's jurisdiction under FPA sections 205 and 206. Because Western does not fall under the jurisdiction of the Commission in those sections, Western does not submit its Tariff agreements for Commission approval, nor does it seek Commission approval to terminate those agreements. An unintended consequence of this change, however, is the potential for confusion on the part of interconnection and transmission customers regarding how any future changes to Western's Tariff would apply to them.

Rather than continue to eliminate the entire first paragraph of the pro forma language from section 9, Western has reintroduced the first paragraph of section 9 from the Commission's original pro forma Tariff with succinct modifications. These modifications make it clear that any future Tariff changes regarding terms and conditions, classification of service, or Tariff agreements will be consistent with the Commission's rules and regulations and will apply to Western's existing Tariff documents, while retaining the elimination of applicability of FPA sections 205 and 206.

Western believes these changes more closely reflect the intent behind the removal of the entire first paragraph of section 9 in Western's original safe harbor Tariff filing, while still accommodating Western's unique status as a non-jurisdictional Federal PMA. In that regard, Western has left intact the second paragraph of section 9 of its Tariff, which does not affect the ability of a transmission or interconnection customer taking service under the Tariff to exercise any rights it has under the FPA and the Commission's rules and regulations.

## 6. Section 13.1

Two of Western's Regions (Desert Southwest and Sierra Nevada) currently offer hourly firm point-to-point transmission service due to customer demand for such a product, and those Regions fully account for the transmission usage in their respective ATC methodologies. Because all of Western's Regions currently do not offer this voluntary product, the Regions that do offer it have established the terms and conditions for its use under Regional business practices posted on their OASIS sites. To date, however, Western's Tariff did not explicitly recognize this fact, and Western has revised section 13.1 of its Tariff to correct this oversight.

## 7. Section 13.2

To address Order No. 890's requirements regarding the implementation of a simultaneous submission window by transmission providers who set a "no earlier than" time limit for transmission service requests, Western proposes to add the necessary language to section 13.2 of its Tariff. Western's proposed language uses a lottery capacity allocation methodology that

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<sup>18</sup> See Western's December 31, 1997 filing in Docket No. NJ98-1-000 (December 31, 1997 Filing); and Missouri Basin Municipal Power Agency, United States Department of Energy – Western Area Power Administration, 99 FERC ¶ 61,062 (2002) (April 12, 2002 Order).

largely mirrors the methodology filed by the Mid-Continent Area Power Pool (MAPP) and approved by the Commission.<sup>19</sup>

#### 8. Sections 13.7(c), 14.5, and 28.6, and Schedule 10

As discussed in more detail below, Western determines its transmission and related rate methodologies on a Federal project-by-project basis under public rate processes as required by Federal regulation.<sup>20</sup> Those specific rates and methodologies are promulgated under individual rate schedules applicable to each project and incorporated by reference into Western's Tariff.<sup>21</sup> Consistent with this approach, Western proposes to include a new Schedule 10 in its Tariff to incorporate by reference any project-specific unreserved use penalty rate schedules that Western chooses to establish in the future, and to revise the relevant Tariff provisions (i.e., sections 13.7(c), 14.5, and 28.6) to reference new Schedule 10 to accommodate the unreserved use penalty methodology established in Order No. 890. Individual project rate schedules will be made effective on or after the later of either the date Western's Tariff revisions become effective or the date any existing rate schedule implementing an unauthorized use penalty rate expires.

#### 9. Section 15.4

A key requirement of the Federal Anti-Deficiency Act<sup>22</sup> restricts Western from obligating funds which have not yet been congressionally appropriated or authorized for expenditure, and thus, Western's obligation under the Tariff to expand or modify transmission facilities must be limited accordingly. Section 28.2 of Western's Tariff contains Commission-approved non-pro forma language that codifies such a limitation for network service requests;<sup>23</sup> however, Western's prior Tariff filings inadvertently omitted this language from the equivalent provision in section 15.4 for firm point-to-point service requests. Therefore, Western has revised section 15.4 so that it now includes the requisite language.

#### 10. Sections 17.3 and 29.2

In a previous filing, Western added language to sections 17.3 and 29.2 of its Tariff to re-introduce the deposit requirement for transmission requests of one year or longer, and also to introduce an escrow alternative to the deposit.<sup>24</sup> However, in so doing, Western erred by using the term "Transmission Customer" in certain instances rather than the proper term "Eligible Customer." Consequently, Western has revised sections 17.3 and 29.2 to remedy this error.

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<sup>19</sup> See Mid-Continent Area Power Pool, 123 FERC ¶ 61,177 (2008); and the Commission's delegated letter order issued on September 23, 2008, in Docket No. OA07-51-002.

<sup>20</sup> 10 C.F.R. Part 903 (2009).

<sup>21</sup> See Western's December 31, 1997 Filing.

<sup>22</sup> 31 U.S.C. § 1341(a)(1)(2003).

<sup>23</sup> See Western's December 31, 1997 Filing.

<sup>24</sup> See Western's January 25, 2005 Filing.

## 11. Sections 19.10 and 32.5

Western has omitted the language in its filing that subjects the transmission provider to payment of monetary penalties for failing to complete transmission studies within 60 days, as well as the requirement to file a notice with the Commission with respect to late studies. However, Western has retained the requirement under which the transmission provider tracks the number of studies it fails to complete on time. Western intends to use Reasonable Efforts to meet the study deadlines and intends to track its performance. Western is omitting only the penalty provision itself.

The Commission has already approved a reciprocity Tariff that omitted the requirement to file a notice with the Commission regarding late studies<sup>25</sup> and payment of penalties.<sup>26</sup> Western is also omitting the payment of the penalties themselves for three reasons. First, Western is a non-jurisdictional entity and the Commission's penalty authority regarding late studies does not extend to Western. Therefore, it would not be appropriate for Western to include the penalty provision in its reciprocity Tariff.

Second, under the pro forma Tariff, the transmission provider must pay the penalties to its customers. The Commission has said that public utilities may not include the penalties in their rates.<sup>27</sup> Western is statutorily required to set its rates to fully recover its costs, and the Commission is required to approve Western's rates if the revenue generated by the rates are sufficient to recover Western's costs consistent with its statutory and regulatory obligations.<sup>28</sup> One significant statutory obligation Western must meet is to set its rates as low as possible consistent with sound business principles.<sup>29</sup> Therefore, Western must include any penalties it pays within its rates to comply with these unique statutory obligations, and paying penalties to customers that must then be recovered from those same customers in accordance with existing statutes would only impose administrative costs on Western and its ratepayers with no tangible benefit. Third, Western is a non-public utility and not subject to the Commission's penalty authority regarding the payment of late studies. The Commission has approved a similar approach in Bonneville Power Administration's Tariff filing (BPA Filing).<sup>30</sup>

Except for the penalty provisions, Western intends to adhere to the directives in Order No. 890 regarding the completion of studies. That is, Western will use Reasonable Efforts to complete the studies within the study deadlines, it will track the percent of non-affiliates' studies that it completes outside of the deadlines, and it will post study metrics regarding its performance under these sections as provided in Order No. 890. Therefore, instead of simply deleting new sections 19.9 and 32.5 of the pro forma Tariff, which provide for the study penalties, Western has amended them to provide that Western will use Reasonable Efforts in the completion of studies,

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<sup>25</sup> East Kentucky Power Coop, Inc., 121 FERC ¶ 61,012 (2007).

<sup>26</sup> United States Department of Energy - Bonneville Power Administration, 128 FERC ¶ 61,057 (2009) at P 65

<sup>27</sup> Order No. 890 at P 1357.

<sup>28</sup> 43 U.S.C. § 485h(c) (2007), 16 U.S.C. § 825(s) (2000), 18 C.F.R. Part 300 (2008), and 10 C.F.R. Part 903 (2009)

<sup>29</sup> 16 U.S.C. § 825s (2000).

<sup>30</sup> United States Department of Energy - Bonneville Power Administration, 128 FERC ¶ 61,057 (2009) (Bonneville) at P 65.



and will track and post its performance in completing studies for both point-to-point and network service. Western intends to adhere to the Commission's study penalty regime up to the point at which legal issues intrude.

Finally, Western has renumbered section 19.9 of the Tariff to reflect new section 19.2 discussed previously, and also has replaced in sections 19.9 and 32.5 instances of the term "due diligence" to accommodate Western's use of Reasonable Efforts to complete transmission studies within the 60-day timelines, as discussed previously.

## 12. Sections 19.11 and 32.6, and Attachment J

Western noted in previous filings that it must comply with its statutory obligations regarding the National Environmental Policy Act (NEPA).<sup>31</sup> However, Western has experienced difficulty in having transmission and interconnection customers execute the necessary documents in a timely manner to comply with NEPA and other environmental and natural resource statutes. As a result, Western in this filing has generally outlined its NEPA compliance obligations in section 16.0 of Attachment J to its Tariff, and has inserted mandatory deadlines for execution of environmental agreements in sections 19.11 and 32.6 of its Tariff.

Because the standard pro forma documents do not generally inform customers of Western's obligations to comply with applicable environmental and natural resource laws, such as NEPA, Western added a provision in section 16.0 of Attachment J to its Tariff to notify both transmission and interconnection customers of Western's obligations. Western has historically used Attachment J to reference any unique obligations it has due to its status as a Federal PMA.<sup>32</sup> The additional provisions also make clear to Western's transmission and interconnection customers that they must comply with all environmental laws, regulations and resource protection measures, including but not limited to any mitigation measures and Best Management Practices associated with the approval of a project and the associated Transmission [or Interconnection] Customer's requested service. Attachment J also informs a customer that Western's decision to execute an agreement is dependent on the conclusions reached in the record of decision under NEPA, or other appropriate NEPA decision document.

Western has also added specific language into its Tariff at sections 19.11 and 32.6 to inform transmission and interconnection customers of the obligation to execute an environmental review agreement that outlines the environmental obligations required for a specific project. Western has posted examples of the generic clauses that will be included in the environmental review agreement on its OASIS.<sup>33</sup> To the extent that projects require specific mitigation measures or other Best Management Practices, those requirements will be included in the individual project's service agreements, construction contracts, or environmental compliance contracts, as appropriate. The parameters for entering into those agreements are contained in the generic environmental review agreement clauses described above. The purpose of these provisions is to

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<sup>31</sup> 42 U.S.C. § 4321, et seq. (2003). [?]

<sup>32</sup> See, generally, Western's January 25, 2005 Filing at p. 9-11.

<sup>33</sup> See the EIS and EA Environmental Review Agreement templates posted at <http://www.wapa.gov/transmission/oatt.htm>.

obligate the customer to any initial as well as ongoing environmental obligations it has as a result of any transmission service taken or interconnection permitted on Federal transmission facilities. The Commission has already approved a similar approach in the BPA Tariff filing.<sup>34</sup>

### 13. Section 23.1

Western has not adopted the provisions of Order No. 890 removing the price cap on the resale of transmission capacity. Western will retain the original pro forma language that allows a transmission customer to reassign its transmission capacity. Accordingly, the rate for capacity reassignment will continue to be capped at the original transmission rate charged to the assignor, Western's maximum stated firm transmission rate in effect at the time of reassignment, or the assignor's own opportunity costs capped at Western's costs of expansion.

Western is not removing the price cap on the resale of transmission capacity because doing so would be inconsistent with Western's obligations under Reclamation Law. Specifically, removal of the price cap and allowing resale of Western's transmission capacity conflicts with the spirit and intent, if not the letter, of the preference clause embodied in both section 9(c) of the Reclamation Project Act of 1939 (Section 9(c)) and section 5 of the Flood Control Act of 1944 (Section 5).<sup>35</sup> These two clauses primarily establish the guidelines that govern Western's mission.

Section 5 refers to the transmitting of power as well as the construction of transmission facilities. Section 5 of the Flood Control Act requires the Secretary to "... transmit and dispose of such power and energy in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles . . . ." Further, the authority and principals Western is required to use to set rates for the sale of power and energy under Section 9(c) are applicable to its ratemaking authority used to set transmission rates. As a result, Western is required to set its transmission rates to recover sufficient revenue to cover its construction, operation, and maintenance costs and an appropriate share of any fixed costs as determined by Western's Administrator. The courts have interpreted Section 9(c) as granting wide discretion to Western's Administrator in marketing Federal power.<sup>36</sup>

Because Western does not make a profit on the sales of the use of its transmission facilities, it would not be appropriate for Western to allow a third party to resell Western's Federal transmission system capacity at a profit. Doing so would be inconsistent with Western's obligation to "transmit and dispose of power and energy" at the "lowest possible rates to consumers." That is, Western cannot establish rates for the sale of its transmission assets over and above its associated costs, and Western interprets the aforementioned statutes as not providing for third parties to do so either. It appears the Commission's resale proposal is an attempt to create economic incentives in an industry that generally has a broader purpose than Western does. Western's mission is more narrowly focused and, as a result, the Commission's

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<sup>34</sup> See Bonneville Power Administration's October 3, 2008 filing in Docket No. NJ09-1-000 at p. 17-18; and United States Department of Energy - Bonneville Power Administration, 128 FERC ¶ 61,057 (2009) at P 12.

<sup>35</sup> 16 U.S.C. § 825(s) and 43 U.S.C. § 485h(c), respectively.

<sup>36</sup> City of Santa Clara v. Andrus, 572 F.2d 660, 667-668 (9<sup>th</sup> Cir. 1978), cert. den., 439 U.S. 859 (1979).

proposal is not consistent with the requirements for providing service over Western's Federal transmission system, which was not created, nor is it intended to be marketed, for purely economic purposes.

Additionally, Western has deleted the language from section 23.1 of the pro forma Tariff pertaining to the transmission provider charging and crediting the reseller and assignee for the reassigned service. This is due to the fact that Western will not act as the financial intermediary between the reseller and assignee; instead, as provided in revised Attachment A-1 of Western's Tariff, Western will continue to charge the original reselling transmission customer as set forth under the original Tariff agreement, and that customer will in turn charge the assignee for the reassigned capacity at their negotiated rate, subject to the pricing cap retained in section 23.1 of Western's Tariff. Therefore, Western will not charge the assignee for reassigned capacity, and the mechanism to account for any difference between the rates charged by Western to the reseller and by the reseller to the assignee will be provided under separate billing arrangements to be negotiated and executed by the reseller and the assignee.

#### 14. Section 29.2(v)

Western has revised section 29.2(v) of the pro forma Tariff so that it conditionally requires network customers to identify the source control area of off-system network resources at the time of designation. Such information is unnecessary for Western's Regions that are situated in WECC, insofar as they use the rated path methodology to determine ATC.<sup>37</sup> Conversely, Western's Upper Great Plains Region uses a flow-based methodology to determine ATC, and, as such, it is necessary for that Region to require its network customers to identify the source control area of off-system network resources.

#### 15. Section 30.9

As modified by Order No. 890, the first revised sentence in section 30.9 of the pro forma Tariff includes the phrase "[the effective date of a Final Rule in RM05-25-000]." To prevent confusion among Western's transmission customers, Western has replaced that phrase with the actual effective date of Order No. 890, and has also added a clarifying note regarding that date.

#### 16. Section 35.2

Order No. 890 deleted from section 35.2 of the pro forma Tariff references to the North American Electric Reliability Council and the regional reliability councils and substituted references to the Electric Reliability Organization (ERO). However, as noted previously, Western's multi-state transmission service territory resides within both MRO and WECC. Each of these regional reliability organizations (RRO) has been delegated certain responsibilities for reliability standards compliance monitoring and enforcement, and WECC in particular actively continues to develop and institute region-specific reliability standards and associated business practices. For these reasons, Western has modified section 35.2 so that it references the reliability guidelines of the ERO and the applicable RRO, rather than only those of the ERO.

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<sup>37</sup> See, e.g., Puget Sound Energy, Inc., 120 FERC ¶ 61,232 at P 10 (2007).

#### 17. Schedules 4 and 9

Western has modified Schedule 4 and new Schedule 9 of the pro forma Tariff to reflect the fact that Western determines its transmission and ancillary service rates and formula methodologies on a Federal project-by-project basis under public rate guidelines as consistent with existing statute and regulation,<sup>38</sup> and that Western promulgates those rates and formula methodologies under the appropriate rate schedules applicable to each project. In so doing, Western removed the language from Schedules 4 and 9 pertaining to the tiered imbalance methodology, and included in Schedule 9 non-pro forma Tariff language previously accepted by the Commission indicating that the specific charges for Generator Imbalance Service are to be set forth in the appropriate rate schedule and providing for changes to the rate methodology.<sup>39</sup> These changes ensure that the outcome of the statutorily mandated public processes related to project-specific imbalance service rates will not be improperly predetermined by language in Western's voluntary reciprocity Tariff. Further, Western made a ministerial revision to Schedule 4 to remove language that has been rendered obsolete due to the fact that all of Western's Regions now have Energy Imbalance rate schedules in effect.

#### 18. Attachment A-1

Similar to certain Commission-approved modifications that Western made in the past,<sup>40</sup> Western has revised new Attachment A-1 of the pro forma Tariff to ensure conformance between Western's long-standing Federal contractual practices and its as-filed forms of service agreement, and to make it consistent with the other forms of agreement in its Tariff. The Commission has previously accepted similar revisions.<sup>41</sup> In addition, Western has modified Attachment A-1 to clarify that the reassignment service agreement is subject to the terms and conditions of the relevant service agreement between Western and the original transmission customer, and to reflect Western's modifications to the billing provisions in revised section 23.1 of the Tariff, as discussed previously.

#### 19. Attachment C

Western has modified Attachment C to its Tariff to provide Western's ATC methodologies as directed by Order No. 890. Western's Attachment C is bifurcated to reflect the fact that Western's transmission system resides within both MRO and WECC. Western's development of Attachment C was informed by the related Order No. 890 compliance filings of certain parties in the MAPP and WestConnect footprints, as well as by the Commission's findings pertaining to those filings.<sup>42</sup>

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<sup>38</sup> 43 U.S.C. § 485h(c) (2007), 16 U.S.C. § 825(s) (2000), 18 C.F.R. Part 300 (2008), and 10 C.F.R. Part 903 (2009)

<sup>39</sup> See Western's December 31, 1997 Filing; and the April 12, 2002 Order.

<sup>40</sup> See Western's January 25, 2005 Filing and March 1, 2007 Filing.

<sup>41</sup> E.g., Western's March 1, 2007 Filing at p. 5.

<sup>42</sup> E.g., Arizona Public Service Co., 123 FERC ¶ 61,024 (2008); and the Commission's delegated letter orders issued on March 28, 2008, and August 21, 2008, in Docket Nos. OA07-90-000, et al., and OA07-90-003, respectively.

20. Attachment D

Western has revised Attachment D to its Tariff to reflect the fact that WECC annually submits to the Commission a System Impact Study Methodology on behalf of each of its member systems, including Western's Regions that are situated within WECC.

21. Attachment K

Inasmuch as Order No. 890 directed that all instances in the pro forma Tariff of the term "Available Transmission Capability" be replaced with "Available Transfer Capability," Western has made a conforming change in the third paragraph of Attachment K to its Tariff. Western has also made some minor ministerial corrections to Attachment K.

22. Attachment N

Western has modified Attachment N to its Tariff to incorporate by reference the revised North American Electric Standards Board Wholesale Electric Quadrant standards as required by Order No. 676-C.<sup>43</sup>

23. Attachment O

New Attachment O ("Procedures for Addressing Parallel Flows") to Western's Tariff incorporates the language required by the Commission in its orders accepting, as modified, certain Order No. 890 compliance filings submitted by public utility transmission providers.<sup>44</sup>

24. Attachment P

Proposed new Attachment P to Western's Tariff sets forth its transmission planning processes as directed by Order No. 890. Like revised Attachment C, Attachment P is bifurcated to reflect the fact that Western's transmission system resides within both MRO and WECC. Western's development of Attachment P was informed by the related Order No. 890 compliance filings of certain parties in the MAPP and WestConnect footprints,<sup>45</sup> as well as by the Commission's findings pertaining to such filings.<sup>46</sup>

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<sup>43</sup> Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676-C, 73 Fed. Reg. 43,848 (July 29, 2008), FERC Stats. & Regs. ¶ 31,274 (July 21, 2008).

<sup>44</sup> E.g., Duke Energy Carolinas, LLC, 122 FERC ¶ 61,077 at P 19 (2008); and Idaho Power Co., 122 FERC ¶ 61,243 at P 36 (2008).

<sup>45</sup> See, e.g., the September 14, 2009 compliance filings submitted by Arizona Public Service Company and Public Service Company of New Mexico in Docket Nos. OA08-33-002 and OA08-34-002, respectively.

<sup>46</sup> E.g., El Paso Electric Co., et al., 124 FERC ¶ 61,051 (2008); and MidAmerican Energy Co., 123 FERC ¶ 61,160 (2008).

## B. LGIP

### 1. Section 1 – Definition of “Reasonable Efforts”

Western has revised the LGIP’s pro forma definition of the term “Reasonable Efforts” to reference the LGIP rather than the LGIA. Western made this change to eliminate confusion that has arisen regarding applicability of the term and to parallel the definition of “Reasonable Efforts” that Western added to its SGIP in a previous filing.<sup>47</sup>

### 2. Section 3.3.5

Western added a new section 3.3.5 to its LGIP to incorporate environmental compliance language in conformance with the language Western included in its Tariff at sections 19.11, 32.6 and Attachment J, as discussed previously.

### 3. Section 8.1, and Section 5.0 of the Interconnection Facilities Study Agreement

As Western explained in a previous filing,<sup>48</sup> Western requires advance payment to perform work related to transmission and interconnection requests consistent with the Federal Contributed Funds Act and the Federal Anti-Deficiency Act.<sup>49</sup> Western has in certain instances used, with the interconnection customer’s concurrence, the Interconnection Facilities Study deposit for the performance of other work such as environmental review activities and development of an Engineering & Procurement Agreement and the LGIA. In addition, Western’s cost of performing the Interconnection Facilities Study and such other work at times does not exceed the required \$100,000 deposit, yet the LGIP implicitly assumes that the deposit will always be exceeded. All that being the case, Western proposes to revise section 8.1 of the LGIP and section 5.0 of the LGIP’s Interconnection Facilities Study Agreement to eliminate potential issues regarding the Interconnection Facilities Study deposit and its use, and to provide more transparency in that respect to the Commission and Western’s prospective interconnection customers.

### 4. Section 11

In a previous filing, Western revised the LGIA-related tender, offer and negotiation provisions in section 11 of the pro forma LGIP to accommodate changes Western made to that section regarding its obligations under NEPA.<sup>50</sup> In so doing, however, Western inadvertently created confusion among its customers related to the tender, offer, and negotiation of a LGIA. Here, Western has made changes to the section 11 of its LGIP to remedy such confusion by clarifying the deadlines provided in sections 11.1 and 11.2. Western has also changed the location of language it previously inserted regarding cost recovery of Western’s efforts related to the negotiation of the LGIA. Finally, as a non-jurisdictional entity, Western does not file its agreements with the Commission as previously noted. As such, Western has also removed the

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<sup>47</sup> See Western’s March 1, 2007 Filing.

<sup>48</sup> Id. at p. 7-8.

<sup>49</sup> 43 U.S.C. § 395 (2007) and 31 U.S.C. § 1341(a)(1)(2003), respectively.

<sup>50</sup> See Western’s January 25, 2005 Filing.

phrase “and Filing” from the title of section 11.3 to be consistent with other areas of its tariff documents, so there is no inadvertent confusion regarding whether or not Western will file an unexecuted agreement with the Commission should a dispute arise.

#### C. LGIA – Article 19.1

In Western’s previous filings it noted that it must comply with the Federal Anti-Assignment Act,<sup>51</sup> and Western, therefore, made changes to the pro forma LGIA language to require Western’s written approval prior to any assignment by the interconnection customer. An unintended consequence of this change has been some confusion on the part of interconnection customers regarding their ability to assign the LGIA to third parties for security purposes, e.g., in several instances, the interconnection customer was concerned that it was only permissible to assign the agreement to one of its affiliates for security purposes. This was not Western’s intent. Assignment of the LGIA may occur to any party provided a potential assignee meets the assignment requirements in Article 19.1. Further, the ability to assign the LGIA for security purposes may occur to any third party, not just affiliates of the interconnection customer. Consequently, Western has made changes to Article 19.1 to remedy this confusion.

#### D. SGIP – Section 3.3

Western has added a new section 3.3 to its SGIP to incorporate environmental compliance language in conformance with what Western included in its Tariff at sections 19.11 and 32.6 and Attachment J, as discussed previously.

#### E. SGIA – Article 7.1

Western has modified the assignment provisions in Article 7.1 of its SGIA to conform them to the revisions Western made to Article 19.1 of the LGIA, as discussed previously.

### **II. PETITION FOR AN EXEMPTION FROM FILING FEES**

Western hereby seeks an exemption in lieu of paying a filing fee applicable to petitions for declaratory orders. As an agency of the United States Department of Energy, Western is engaged in official business of the Federal Government in filing this petition for a declaratory order from the Commission that the revisions to its non-jurisdictional Tariff, including the LGIA, LGIP, SGIA, and SGIP, continue to be an acceptable reciprocity Tariff. Western is an agency of the United States and, therefore, is exempt from filing fees.<sup>52</sup>

### **III. EFFECTIVE DATE**

Western requests that the revised Tariff become effective on December 1, 2009. Western notes that due to the year-end holiday period and in order to synchronize Western’s tracking of its transmission study performance metrics with the calendar quarter posting requirement in Order

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<sup>51</sup> 41 U.S.C. § 15 (2008).

<sup>52</sup> 18 C.F.R. §§ 381.102(a), 381.108(a), and 381.302(c) (2008).

No. 890, Western will begin tracking such metrics on January 1, 2010. As a result, Western will post its first set of quarterly metrics within 15 days of the end of the quarter,<sup>53</sup> or by April 15, 2010.

#### **IV. REQUEST FOR WAIVER OF SERVICE REQUIREMENTS**

Western has informed all interested parties regarding the proposed Tariff changes through an informal public process. Western has notified all customers that have indicated a desire to be kept informed of the Tariff development of this filing. Western shall make copies of this filing available for public inspection on its Web site at [www.wapa.gov/transmission/oatt.htm](http://www.wapa.gov/transmission/oatt.htm). Therefore, Western will not file a copy of this tariff upon all interested parties.

#### **V. CONTENTS OF THE FILING**

Along with this transmittal letter, the documents submitted with this filing include:<sup>54</sup>

Attachment A – A clean version of Western’s proposed Tariff, including the LGIP, LGIA, SGIP, and SGIA.

Attachment B – A redlined version of Western’s proposed Tariff, including the LGIP, LGIA, SGIP, and SGIA compared with all of those documents as previously approved by the Commission up to and including the October 31, 2007, filing in Docket No. NJ08-1-000 and the Commission’s relevant delegated letter order issued on November 16, 2007.

#### **VI. COMMUNICATION**

Western requests that all correspondence, pleadings, and other communications concerning this filing be served upon:

Ronald J. Klinefelter  
Attorney  
Western Area Power Administration  
Office of General Counsel  
12155 W. Alameda Parkway  
P.O. Box 281213  
Lakewood, CO 80228-8213  
(720) 962-7010  
[klinefelter@wapa.gov](mailto:klinefelter@wapa.gov)

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<sup>53</sup> Order No. 890 at P 1309.

<sup>54</sup> In light of the Notice Announcing New Combined Notice of Filings issued by the Commission on May 13, 2005, Western has not included a Notice of Filing and a diskette containing the same.



Edward F. Hulls  
Chair, Power Systems Operations Council  
Western Area Power Administration  
Rocky Mountain Region  
5555 E. Crossroads Blvd.  
P.O. Box 3700  
Loveland, CO 80539-3003  
(970) 461-7566  
[hulls@wapa.gov](mailto:hulls@wapa.gov)

Dated this 30th day of September, 2009.

Respectfully submitted,

ORIGINAL SIGNED BY

Ronald J. Klinefelter  
Attorney  
Office of General Counsel  
Western Area Power Administration

Attachments

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Lakewood, Colorado, this 30<sup>th</sup> day of September, 2009.

ORIGINAL SIGNED BY

By: \_\_\_\_\_

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